

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ELIZABETH A. GLORE,

Plaintiff,

V.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration.

Defendant.

NO: 1:15-CV-3027-RMP

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND REMANDING
FOR FURTHER PROCEEDINGS

BEFORE THE COURT are Plaintiff Elizabeth A. Glore's Motion for

Summary Judgment, **ECF No. 12**, and Defendant Carolyn W. Colvin’s Motion for Summary Judgment, **ECF No. 14**. The Court has reviewed the motions, Plaintiff’s reply memorandum (ECF No. 16), the administrative record, and is fully informed.

BACKGROUND

Elizabeth A. Glore filed an application for Disability Insurance Benefits (DIB) on December 30, 2011, alleging disability beginning August 30, 2007. ECF No. 9-2 at 20, Tr. 19. Ms. Glore's application was denied initially and again on reconsideration, ECF No. 9-4 at 2, Tr. 101; ECF No. 9-4 at 6, Tr. 105. Ms. Glore

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1 requested a hearing, which was held via live-video before Administrative Law
2 Judge (“ALJ”) Kimberly Boyce on July 15, 2013. ECF No. 9-2 at 20, Tr. 19.
3 Ms. Glore was present and represented by counsel Linda Worthington. *Id.* The ALJ
4 heard testimony from vocational expert (“VE”) Trevor Duncan. *Id.* At the hearing,
5 Ms. Glore amended the alleged onset date of disability to April 10, 2012. *Id.*

6 The ALJ found that Ms. Glore had not engaged in substantial gainful
7 activity, as defined in 20 C.F.R. § 404.1572(a), from the alleged onset date of April
8 10, 2012, through her date last insured of December 31, 2012. ECF No. 9-2 at 22,
9 Tr. 21. Further, the ALJ found that Ms. Glore had the following severe
10 impairments as defined by 20 C.F.R. § 404.1520(c): left ear hearing impairment,
11 depression, and anxiety. *Id.*

12 However, the ALJ found that Ms. Glore did not have an impairment or
13 combination of impairments that met or medically equaled the severity of one of
14 the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (20 C.F.R.
15 §§ 404.1520(d), 404.1525, and 404.1526). ECF No. 9-2 at 23, Tr. 22. The ALJ
16 further found that Ms. Glore had the residual functional capacity (“RFC”)

17 to perform a full range of work at all exertional levels but with the
18 following nonexertional limitations: the claimant can perform work in
19 which the noise level is no more than moderate. Considering the effects
20 of medication and balance concerns, the claimant can perform work that
21 is not at unprotected heights and in which hazards are not present.
Further, assume that, in order to meet ordinary and reasonable employer
expectations regarding attendance and production, the claimant can
understand, remember and carry out unskilled, routine and repetitive
work, and can cope with occasional work setting change and occasional

1 interaction with supervisors. The claimant can work in proximity to
2 coworkers, but not in a team or cooperative effort. The claimant can
3 perform work that does not require interaction with the general public
as an essential element of the job, but occasional incidental contact with
the general public is not precluded.

4 ECF No. 9-2 at 25, Tr. 24.

5 The VE testified that Ms. Glore was able to perform her past relevant work
6 as a copy machine operator. ECF No. 9-2 at 28, Tr. 27. Given Ms. Glore's age,
7 education, work experience, and residual functional capacity, the VE further
8 testified that there were a number of jobs available in the national economy for an
9 individual sharing her characteristics. ECF No. 9-2 at 29, Tr. 28. The ALJ then
10 found that "the claimant was capable of making a successful adjustment to other
11 work that existed in significant numbers in the national economy." *Id.* The ALJ
12 concluded that Ms. Glore was not under a disability as defined by the Social
13 Security Act. *Id.* Ms. Glore's application was denied on July 25, 2013. ECF No. 9-
14 2 at 17, Tr. 16.

15 Ms. Glore filed a request for review by the Appeals Council, which was
16 denied on December 21, 2014. ECF No. 9-2 at 2, Tr. 1. Ms. Glore then filed a
17 complaint in the District Court for the Eastern District of Washington on February
18 19, 2015, ECF No. 3, and the Commissioner answered the complaint on June 15,
19 2015. ECF No. 8. This matter is therefore properly before the Court pursuant to 42
20 U.S.C. § 405(g). Ms. Glore filed a motion for summary judgment on July 27, 2015.
21 ECF No. 12. The Commissioner filed a cross motion for summary judgment on

1 September 8, 2015. ECF No. 14. Ms. Glore filed a reply memorandum on
2 September 22, 2015. ECF No. 16.

3 STATEMENT OF FACTS

4 The facts of this case are set forth in the administrative hearing transcripts
5 and record, ECF No. 9. Ms. Glore was 53 years old when she applied for DIB, and
6 55 years old when the hearing was held. *See* ECF No. 9-2 at 20, Tr. 19. Ms. Glore
7 has a high school education, ECF No. 9-2 at 28, Tr. 27, and has held a variety of
8 jobs. *See* ECF No. 9-6 at 11, Tr. 186.

9 STANDARD OF REVIEW

10 Congress has provided a limited scope of judicial review of a
11 Commissioner's final decision. 42 U.S.C. § 405(g). A reviewing court must uphold
12 the Commissioner's decision, determined by an ALJ, when the decision is
13 supported by substantial evidence and not based on legal error. *See Jones v.*
14 *Heckler*, 760 F.2d 993, 995 (9th Cir. 1985). Substantial evidence is more than a
15 mere scintilla, but less than a preponderance. *Sorenson v. Weinberger*, 514 F.2d
16 1112, 1119 n.10 (9th Cir. 1975). Substantial evidence "means such relevant
17 evidence as a reasonable mind might accept as adequate to support a conclusion."
18 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal citation omitted).

19 The reviewing court should uphold "such inferences and conclusions as the
20 [Commissioner] may reasonably draw from the evidence." *Mark v. Celebreeze*,
21 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a

1 whole, not just the evidence supporting the Commissioner's decision. *Weetman v.*
2 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528,
3 530 (9th Cir. 1986) ("This court must consider the record as a whole, weighing
4 both the evidence that supports and detracts from the [Commissioner's]
5 conclusion."). "[T]he key question is not whether there is substantial evidence that
6 could support a finding of disability, but whether there is substantial evidence to
7 support the Commissioner's actual finding that claimant is not disabled." *Jamerson*
8 *v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

9 It is the role of the trier of fact, not the reviewing court, to resolve conflicts
10 in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
11 rational interpretation, the reviewing court may not substitute its judgment for that
12 of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus,
13 if there is substantial evidence to support the administrative findings, or if there is
14 conflicting evidence that will support a finding of either disability or nondisability,
15 the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226,
16 1229–30 (9th Cir. 1987).

17 SEQUENTIAL PROCESS

18 Under the Social Security Act (the "Act"),

19 an individual shall be considered to be disabled . . . if he is unable to
20 engage in any substantial gainful activity by reason of any medically
21 determinable physical or mental impairment which can be expected to
result in death or which has lasted or can be expected to last for a
continuous period of not less than 12 months.

1 42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be
2 determined to be under a disability only if her impairments are of such severity that
3 claimant is not only unable to do her previous work but cannot, considering
4 claimant's age, education, and work experience, engage in any other substantial
5 gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).
6 "Thus, the definition of disability consists of both medical and vocational
7 components." *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a claimant is disabled. 20 C.F.R. § 404.1520(a)(4). Step
10 one determines if the claimant is engaged in substantial gainful activities. If the
11 claimant is engaged in substantial gainful activities, benefits are denied. 20 C.F.R.
12 § 404.1520(a)(4)(i).

13 If the claimant is not engaged in substantial gainful activities, the ALJ, under
14 step two, determines whether the claimant has a medically severe impairment or
15 combination of impairments. If the claimant does not have a severe impairment or
16 combination of impairments, the disability claim is denied. 20 C.F.R.
17 § 404.1520(a)(4)(ii).

18 If the impairment is severe, the evaluation proceeds to step three, which
19 compares the claimant's impairment to a number of listed impairments
20 acknowledged by the Commissioner to be so severe as to preclude substantial
21

1 gainful activity. 20 C.F.R. § 404.1520(a)(4)(iii); *see also* 20 C.F.R. § 404, Subpt.
2 P, App. 1. If the impairment meets or equals one of the listed impairments, the
3 claimant is conclusively presumed to be disabled. 20 C.F.R. § 404.1520(a)(4)(iii).

4 Before proceeding to step four, the claimant's residual functional capacity is
5 assessed. 20 C.F.R. § 404.1520(e). An individual's residual functional capacity is
6 the ability to do physical and mental work activities on a sustained basis despite
7 limitations from any impairments. 20 C.F.R. § 404.1545(a)(1).

8 If the impairment is not one conclusively presumed to be disabling, the
9 evaluation proceeds to step four, where the ALJ determines whether the
10 impairment prevents the claimant from performing work she has performed in the
11 past. If the claimant is able to perform her previous work, the claimant is not
12 disabled. 20 C.F.R. § 404.1520(a)(4)(iv).

13 If the claimant cannot perform her previous work, the final step considers
14 whether the claimant is able to perform other work in the national economy in
15 view of her residual functional capacity, age, education, and past work experience.
16 20 C.F.R. § 404.1520(a)(4)(v).

17 At step five, the initial burden of proof rests upon the claimant to establish a
18 *prima facie* case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d
19 920, 921 (9th Cir. 1971). The claimant satisfies this burden by establishing that a
20 physical or mental impairment prevents her from engaging in her previous
21 occupation. The burden then shifts to the Commissioner to show that (1) the

1 claimant can perform other substantial gainful activity, and (2) a “significant
2 number of jobs exist in the national economy” which the claimant can perform.
3 *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984).

4 **ISSUES**

5 Ms. Glore alleges that the ALJ committed reversible error by (1) improperly
6 rejecting the medical opinion testimony of Drs. Thomas Genthe, Thomas Clifford,
7 and Michael Brown; (2) improperly determining that Ms. Glore was not credible,
8 and (3) improperly assessing Ms. Glore’s alleged memory impairment. *See*
9 *generally* ECF No. 12.

10 **DISCUSSION**

11 **I. Rejection of Medical Opinion Evidence**

12 Ms. Glore argues that the ALJ both improperly rejected medical opinion
13 evidence and failed to fully account for other accepted medical opinions when
14 formulating the RFC. *Id.* at 3–16. As to Dr. Genthe, Ms. Glore alleges that the ALJ
15 (1) failed to fully account for the limitations opined by Dr. Genthe concerning
16 contact with supervisors and coworkers and (2) failed to provide specific and
17 legitimate reasons for rejecting Dr. Genthe’s assessment that Ms. Glore “is
18 unlikely to function adequately in a work setting until her psychological symptoms
19 have been managed more effectively.” *Id.* at 3–7 (quoting ECF No. 9-7 at 19,

1 Tr. 256). As to Drs. Brown and Clifford,¹ Ms. Glore alleges that the ALJ failed to
2 fully account for the limitations opined by the doctors concerning attendance at
3 work, occasional lapses in performing tasks, and contact with coworkers. *Id.* at 8–
4 9.

5 **A. Legal Standard for Rejecting Medical Opinion**

6 “[T]he Commissioner must provide ‘clear and convincing’ reasons for
7 rejecting the uncontradicted opinion of an examining physician.” *Lester v. Chater*,
8 81 F.3d 821, 830 (9th Cir. 1995). If controverted, “the opinion of an examining
9 doctor . . . can only be rejected for specific and legitimate reasons that are
10 supported by substantial evidence in the record.” *Id.* at 830–31. “[I]t is incumbent
11 on the ALJ to provide detailed, reasoned, and legitimate rationales for disregarding
12 the physicians’ findings.” *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir. 1988).

13 Concerning medical opinion evidence, “[t]he ALJ is responsible for
14 resolving conflicts in medical testimony, and resolving ambiguity. Determining
15 whether inconsistencies are material (or are in fact inconsistencies at all) and
16 whether certain factors are relevant to discount the opinions . . . falls within this
17

18 ¹ The ALJ only discussed Dr. Brown’s opinion in his findings of fact. *See* ECF
19 No. 9-2 at 27, Tr. 26. However, as both parties agree that Drs. Brown and Clifford
20 gave substantively identical opinions, *see* ECF No. 12 at 7; ECF No. 14 at 11 n.3,
21 the ALJ’s omission of Dr. Clifford’s opinion was harmless error.

1 responsibility.” *Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 603 (9th
2 Cir. 1999).

3 **B. Dr. Thomas Genthe**

4 ***1. Failing to Fully Account for Social Limitations in the RFC***

5 Ms. Glore alleges that, while the ALJ purported to give significant weight to
6 Dr. Genthe’s opinion as to social limitations, the ALJ failed to fully account for
7 those limitations when formulating Ms. Glore’s RFC. ECF No. 12 at 3. The
8 Commissioner argues that the ALJ adequately incorporated Dr. Genthe’s opinions.
9 ECF No. 14 at 5.

10 Dr. Genthe found that Ms. Glore’s ability to get along with coworkers and/or
11 peers and ability to respond appropriately to criticism from supervisors were
12 “poor.” ECF No. 9-7 at 19, Tr. 256. The ALJ recounted this finding and stated that
13 “[s]ignificant weight is given to this portion of Dr. Genthe’s opinion as it is based
14 on a thorough evaluation of the claimant and is consistent with his
15 contemporaneous mental status exam.” ECF No. 9-2 at 27, Tr. 26. In the ALJ’s
16 assessment of Ms. Glore’s RFC, the ALJ included the limitation that the individual
17 “can cope with . . . occasional interaction with supervisors.” ECF No. 9-2 at 25,
18 Tr. 24. The ALJ also included the limitation that “[t]he claimant can work in
19 proximity to coworkers, but not in a team or cooperative effort.” *Id.* Ms. Glore
20 argues that these limitations fail to fully account for Dr. Genthe’s opinion and
21 findings. ECF No. 12 at 3.

1 An “RFC that fails to take into account a claimant’s limitations is defective.”
2 *Valentine v. Comm’r Social Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009). The
3 ALJ’s findings, and subsequently assessed RFC, do not need to be identical to the
4 relevant assessed limitations. *Turner v. Comm’r of Social Sec.*, 613 F.3d 1217,
5 1223 (9th Cir. 2010). For the RFC to be sufficiently inclusive, the ALJ need only
6 incorporate limitations consistent with relevant and accepted medical opinion. *Id.*
7 In *Turner*, for example, the limitations the ALJ incorporated into the RFC were,
8 although not verbatim, “entirely consistent” with accepted medical opinion. *Id.*

9 The ALJ’s assessment of Ms. Glore’s social limitations are sufficiently
10 consistent with Dr. Genthe’s medical opinion. Dr. Genthe opined that Ms. Glore’s
11 ability to respond appropriately to criticism from supervisors was “poor.” ECF
12 No. 9-7 at 19, Tr. 256. The ALJ incorporated this opinion into Ms. Glore’s RFC
13 through the limitation that the individual have only “occasional contact with
14 supervisors.” ECF No. 9-2 at 27, Tr. 26. Dr. Genthe opined that Ms. Glore’s ability
15 to get along with coworkers was “poor.” ECF No. 9-7 at 19, Tr. 256. The ALJ
16 incorporated this opinion into Ms. Glore’s RFC through the limitation that the
17 individual “can work in proximity to coworkers, but not in a team or cooperative
18 effort.” ECF No. 9-2 at 27, Tr. 26. The Court finds that these limitations were a
19 rational interpretation of the medical evidence and sufficiently consistent with
20 Dr. Genthe’s opinions. *See Batson v. Comm’r of Social Sec. Admin.*, 359 F.3d

1 1190, 1198 (9th Cir. 2004) (“When the evidence before the ALJ is subject to more
2 than one rational interpretation, we must defer to the ALJ’s conclusion.”).

3 Ms. Glore argues that Dr. Genthe’s finding of “poor” is the equivalent of a
4 disability finding itself. *See* ECF No. 12 at 4. As support, Ms. Glore cites Social
5 Security Ruling 85-15. 1985 WL 56857 (Jan. 1, 1985). SSR 85-15 notes that a
6 substantial loss of ability to respond appropriately to supervisors or coworkers
7 would justify a finding of disability. *Id.* at *4. The Social Security Administration,
8 however, did not hold that a finding of “poor” was the substantive equivalent of a
9 “substantial loss of ability.” Dr. Genthe did not opine that Ms. Glore had no ability
10 to interact with others. *See* ECF No. 9-7 at 19, Tr. 256. He instead merely rated her
11 ability to interact with supervisors and coworkers as “poor.” *Id.* As Dr. Genthe did
12 not define the limitations and scope of “poor,” the ALJ’s rational interpretation of
13 Dr. Genthe’s findings is entitled to deference. The Court finds that the ALJ did not
14 commit reversible error when incorporating Dr. Genthe’s findings as to
15 Ms. Glore’s social limitations into the RFC.

16 ***2. Failure to Provide Specific and Legitimate Reasons for Rejecting Opinion***

17 Dr. Genthe opined that Ms. Glore was “unlikely to function adequately in a
18 work setting until her psychological symptoms have been managed more
19 effectively.” ECF No. 9-7 at 19, Tr. 256. The ALJ gave little weight to this portion
20 of Dr. Genthe’s opinion as “it is not consistent with evidence, and the claimant’s
21 ability to function in a work environment is an opinion reserved for the

1 Commissioner.” ECF No. 9-2 at 27, Tr. 26. Ms. Glore alleges that the ALJ
2 improperly rejected Dr. Genthe’s assessment by not providing the required
3 “specific and legitimate” reasons. ECF No. 12 at 5.

4 As to the ALJ’s conclusion that Dr. Genthe’s opinion was “not consistent
5 with evidence,” *see* ECF No. 9-2 at 27, Tr. 26, the Commissioner argues that the
6 Court should infer that the ALJ was referring to her earlier discussion of
7 Dr. Brown’s opinion. ECF No. 14 at 8. The ALJ gave “great weight” to
8 Dr. Brown’s opinion as “it is consistent with the findings of Dr. Genthe, discussed
9 below, which showed that while the claimant experiences some psychiatric
10 symptoms, she is still able to complete her activities of daily living independently,
11 care for her grandson, and cooperate with medical providers.” ECF No. 9-2 at 27,
12 Tr. 26. The core of Dr. Brown’s opinion was that, while Ms. Glore could suffer
13 “occasional lapses from her psychiatric condition,” these would “not . . . preclude
14 productive activity in a competitive employment situation.” ECF No. 9-3 at 23,
15 Tr. 96.

16 The Court is “constrained to review the reasons the ALJ asserts.” *Connett v.*
17 *Barnhart*, 340 F.3d 871, 874 (9th Cir. 2003). As Dr. Genthe’s opinion concerning
18 Ms. Glore’s ability to work was contradicted by Dr. Brown, the ALJ need only
19 provide “specific and legitimate” reasons for rejecting Dr. Genthe’s opinion. *See*
20 *Widmark v. Barnhart*, 454 F.3d 1063, 1066 (9th Cir. 2006). To provide a sufficient
21 basis to reject testimony, the ALJ must identify “what evidence undermines” the

1 opinion. *Lester*, 91 F.3d at 834. A reviewing court cannot “comb the administrative
2 record to find specific conflicts.” *Burrell v. Colvin*, 775 F.3d 1133, 1138 (9th Cir.
3 2014).

4 The ALJ’s general finding that Dr. Genthe’s assessment was “inconsistent
5 with evidence” did not provide the required “specific and legitimate” reason to
6 reject Dr. Genthe’s opinion. Although the Commissioner points to Dr. Brown’s
7 opinion, the ALJ merely notes that she gives “[g]reat weight” to Dr. Brown’s
8 opinion as “it is consistent with the findings of Dr. Genthe.” ECF No. 9-2 at 27,
9 Tr. 26. Dr. Genthe opined that Ms. Glore was “unlikely to function adequately in a
10 work setting” while Dr. Brown found that, despite her limitations, Ms. Glore could
11 “persist.” *Compare* ECF No. 9-7 at 19, Tr. 256 *with* ECF No. 9-3 at 23, Tr. 96. The
12 ALJ endorsed Dr. Brown’s opinion due to its consistency with Dr. Genthe’s
13 opinion. The Court will not, as requested by the Commissioner, conversely infer
14 that the ALJ rejected Dr. Genthe’s opinion due to any inconsistency with
15 Dr. Brown. While that may have been the ALJ’s intention, the Court can neither
16 “comb” the record nor concoct its own, *post-hoc* rationalizations to support the
17 ALJ’s determination. As such, the ALJ’s statement that Dr. Genthe’s opinion was
18 not “consistent with evidence” did not provide the required “specific and
19 legitimate” reason, and the Court finds that the ALJ erred in this regard.

20 The ALJ also rejected Dr. Genthe’s opinion because the “claimant’s ability
21 to function in a work environment is an opinion reserved for the Commissioner.”

1 ECF No. 9-2 at 27, Tr. 26. A physician “may render opinion on the ultimate issue
2 of disability—the claimant’s ability to perform work.” *Reddick v. Chater*, 157 F.3d
3 715, 726 (9th Cir. 1998). While “[t]he administrative law judge is not bound by the
4 uncontested opinions of the claimant’s physicians on the ultimate issue of
5 disability . . . he cannot reject them without presenting clear and convincing
6 reasons for doing so.” *Matthews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993). A
7 physician’s “opinion on disability, even if controverted, can be rejected only with
8 specific and legitimate reasons supported by substantial evidence in the record.”
9 *Reddick*, 157 F.3d at 726.

10 Under 20 C.F.R. § 404.1527(d)(1), a conclusory statement “by a medical
11 source that [a claimant] is ‘disabled’ or ‘unable to work’ does not mean that [the
12 Social Security Administration] will determine that [a claimant is] disabled.” 20
13 C.F.R. § 404.1527(d)(1). However, an assessment of a claimant’s likelihood of
14 being able to sustain employment is not a conclusory statement as envisioned by
15 § 404.1527(d)(1). *See Hill v. Astrue*, 698 F.3d 1153, 1159–60 (9th Cir. 2012)
16 (finding that the ALJ should have considered physician’s opinion that the
17 claimant’s “combination of mental and medical problems makes the likelihood of
18 sustaining full time competitive employment unlikely”).

19 Here, Dr. Genthe opined that, due to her social limitations, Ms. Glore was
20 “unlikely to function adequately in a work setting until her psychological
21 symptoms have been managed more effectively.” ECF No. 9-7 at 19, Tr. 256. This

1 opinion, similar to that at issue in *Hill*, is an assessment of Ms. Glore's likelihood
2 of being able to sustain employment, not a conclusory statement as to disability.
3 The Commissioner insists that *Hill* is distinguishable as Dr. Genthe's opinion is
4 based on subjective complaints, as opposed to "objective medical evidence." ECF
5 No. 14 at 10 (citing *Hill*, 698 F.3d at 1160). However, *Hill* did not indicate that the
6 holding was limited to only medical impairments that can be objectively identified.
7 *See Hill*, 698 F.3d at 1160. As the ALJ found that other portions of Dr. Genthe's
8 opinion were based on a "thorough evaluation of the claimant and consistent with
9 [Dr. Genthe's] contemporaneous mental status exam," ECF No. 9-2 at 27, Tr. 26,
10 Dr. Genthe was making an "assessment" of Ms. Glore's ability to sustain
11 employment. The Court finds that the ALJ could not disregard Dr. Genthe's
12 assessment on the basis that he was rendering an opinion on an issue "reserved for
13 the Commissioner." *See* ECF No. 9-2 at 27, Tr. 26.

14 To conclude, the Court finds that the ALJ erred when rejecting Dr. Genthe's
15 opinion that Ms. Glore was "unlikely to function adequately in a work setting until
16 her psychological symptoms were managed more effectively." ECF No. 9-2 at 27,
17 Tr. 26, 256. "A decision of the ALJ will not be reversed for errors that are
18 harmless." *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). An error is
19 harmless when it is "inconsequential to the ultimate nondisability determination."
20 *Stout v. Comm'r, Social Sec. Admin.*, 454 F.3d 1050, 1055 (9th Cir. 2006).

1 The Court cannot say that the ALJ's error in rejecting Dr. Genthe's
2 assessment was nonprejudicial to Ms. Glore. Dr. Genthe opined that Ms. Glore's
3 social limitations would prevent her from functioning adequately in an
4 employment setting. ECF No. 9-7 at 19, Tr. 256. If this opinion had been credited
5 and considered by the ALJ, the ALJ's determination as to Ms. Glore's RFC would
6 have included more restrictive limitations to account for Dr. Genthe's assessment.

7 Although the Court did not find reversible error in the ALJ's formulation of
8 Ms. Glore's social limitations in the RFC, the incorporated severity of Ms. Glore's
9 social limitations may change after Dr. Genthe's opinion is reconsidered. At the
10 very least, the ALJ would have given legitimate and detailed reasons why she was
11 rejecting Dr. Genthe's assessment while endorsing Dr. Genthe's other opinions and
12 observations that formed the basis of the rejected assessment. As such, the Court
13 finds that the ALJ's error in rejecting Dr. Genthe's assessment was not harmless to
14 Ms. Glore. *See Hill*, 698 F.3d at 1160 (finding that the ALJ's improper disregard of
15 medical opinion was not harmless error).

16 **C. Drs. Michael Brown and Thomas Clifford**

17 Ms. Glore alleges that, while the ALJ purported to endorse the medical
18 opinions expressed by Drs. Brown and Clifford, the ALJ did not fully incorporate
19 the limitations they identified when formulating Ms. Glore's RFC. ECF No. 12 at
20 8. The Commissioner argues that the ALJ adequately accounted for Drs. Brown
21 and Clifford's opinions in the RFC. ECF No. 14 at 11.

1 Dr. Brown found that Ms. Glore's psychiatric limitations limit her ability to
2 work in close proximity to the general public and co-workers. ECF No. 9-3 at 23,
3 Tr. 96. Dr. Brown noted, however, that "if contact was kept brief and superficial,
4 [claimant] can persist." *Id.* The ALJ recited this finding and gave it "[g]reat
5 weight." ECF No. 9-2 at 27, Tr. 26. In the ALJ's assessment of Ms. Glore's RFC,
6 the ALJ included the limitation that "[t]he claimant can work in proximity to
7 coworkers, but not in a team or cooperative effort." ECF No. 9-2 at 25, Tr. 24.
8 Ms. Glore argues that this limitation fails to fully account for the opinions of
9 Drs. Brown and Clifford. ECF No. 12 at 8.

10 Dr. Brown also found that Ms. Glore's psychiatric limitations would "reduce
11 attendance" and cause "occasional lapses" in performing tasks. ECF No. 9-3 at 23,
12 Tr. 96. The ALJ recounted these findings and gave them "[g]reat weight." ECF
13 No. 9-2 at 27, Tr. 26. In the ALJ's assessment of Ms. Glore's RFC, the ALJ
14 instructed the VE to "assume that, in order to meet ordinary and reasonable
15 employer expectations regarding attendance and production, the claimant can
16 understand, remember and carry out unskilled, routine and repetitive work." ECF
17 No. 9-2 at 25, Tr. 24. Ms. Glore argues that this limitation fails to fully account for
18 the opinions of Drs. Brown and Clifford. ECF No. 12 at 8-9.

19 An "RFC that fails to take into account a claimant's limitations is defective."
20 *Valentine*, 574 F.3d at 690. The ALJ's findings, and subsequently assessed RFC,
21 do not need to be identical to the relevant assessed limitations. *Turner*, 613 F.3d at
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1 1223. For the RFC to be sufficiently inclusive, the ALJ need only use limitations
2 consistent with relevant and accepted medical opinion. *Id.* As the court noted in
3 *Turner*, the limitations observed by the ALJ were, although not verbatim, “entirely
4 consistent” with the medical opinion. *Id.*

5 The ALJ’s assessment of Ms. Glore’s social limitations are sufficiently
6 consistent with Drs. Brown and Clifford’s medical opinions. Drs. Brown and
7 Clifford opined that Ms. Glore’s ability to work in close proximity to co-workers
8 was limited. ECF No. 9-3 at 23, Tr. 96. Drs. Brown and Clifford however stated
9 that, “if contact was kept brief and superficial,” Ms. Glore could “persist.” *Id.* ECF
10 No. 9-7 at 19, Tr. 256. The ALJ incorporated these opinions into Ms. Glore’s RFC
11 with the limitation that “[t]he claimant can work in proximity to coworkers, but not
12 in a team or cooperative effort.” ECF No. 9-2 at 27, Tr. 26. The Court finds that
13 this limitation was a rational interpretation of the medical evidence and entirely
14 consistent with Drs. Brown and Clifford’s opinions that contact be kept “brief and
15 superficial.” *See Batson*, 359 F.3d at 1198 (“When the evidence before the ALJ is
16 subject to more than one rational interpretation, we must defer to the ALJ’s
17 conclusion.”).

18 The ALJ’s assessment of the attendance and “occasional lapse” issues are
19 also sufficiently consistent with Drs. Brown and Clifford’s medical opinions.
20 Dr. Brown limited his opinion concerning attendance by noting that Ms. Glore
21 “has been able to persist the majority of the time.” ECF No. 9-3 at 23, Tr. 96.

1 Similarly, Dr. Brown conditioned the “occasional lapse” limitation with “although
2 not so to preclude productive activity in a competitive employment situation.” *Id.*
3 The ALJ incorporated these limitations, with the opined caveats, into the RFC by
4 finding that “in order to meet ordinary and reasonable employer expectation
5 regarding **attendance** and **production**, the claimant can understand, remember and
6 **carry out** . . . work.” ECF No. 9-2 at 25, Tr. 24 (emphasis added). The Court finds
7 that this limitation was a rational interpretation of the medical evidence and
8 sufficiently consistent with Drs. Brown and Clifford’s opinions. *See Batson*, 359
9 F.3d at 1198 (“When the evidence before the ALJ is subject to more than one
10 rational interpretation, we must defer to the ALJ’s conclusion.”).

11 As such, the Court finds that the ALJ did not commit reversible error when
12 considering Drs. Brown and Clifford’s opinions as the findings were adequately
13 incorporated into the ALJ’s RFC finding.

14 **II. Credibility Determination**

15 Ms. Glore alleges that the ALJ found she lacked credibility without
16 providing the requisite “clear and convincing reasons.” ECF No. 12 at 9.
17 Specifically, Ms. Glore argues that the ALJ improperly considered the lack of
18 objective medical evidence, her symptom’s improvement with treatment, and her
19 activities of daily life. *Id.* at 9–17.

20 ¶

21 ¶

1 **A. Standard for Making Credibility Determination**

2 The Commissioner's credibility determination must be supported by
3 findings sufficiently specific to permit the reviewing court to conclude the ALJ did
4 not arbitrarily discredit a claimant's testimony. *Bunnell v. Sullivan*, 947 F.2d 341,
5 345–46 (9th Cir. 1991). If there is no affirmative evidence that the claimant is
6 malingering, the ALJ must provide “clear and convincing” reasons for rejecting the
7 claimant's testimony regarding the severity of symptoms.² *Reddick*, 157 F.3d at
8 722.

9 If the ALJ finds that a claimant's statements are not credible, she need not
10 reject the entirety of a claimant's symptom testimony. *See Robbins v. Social Sec.*
11 *Admin.*, 466 F.3d 880, 883 (9th Cir. 2006). The ALJ may find the claimant's
12 statements about pain to be credible to a certain degree, but discount statements
13 based on her interpretation of evidence in the record as a whole. *See id.* If the
14 credibility findings are supported by substantial evidence in the record, the
15 reviewing court may not second-guess the ALJ's determination. *See Morgan*, 169

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17

² The Commissioner argues that the proper standard of review of an ALJ's
18 credibility determination is “substantial evidence.” ECF No. 14 at 15–16.
19 However, as the Ninth Circuit is clear that the “clear and convincing reasons”
20 standard governs, this Court is required to apply binding precedent. *See Garrison*
21 *v. Colvin*, 759 F.3d 995, 1015 n.18 (9th Cir. 2014).

1 F.3d at 600. However, an ALJ's failure to articulate specifically "clear and
2 convincing" reasons for rejecting a claimant's subjective complaints is reversible
3 error. *Orn v. Astrue*, 495 F.3d 625, 635 (9th Cir. 2007).

4 In addition to ordinary techniques of credibility evaluation, the ALJ may
5 consider the following factors when weighing the claimant's credibility: the
6 claimant's reputation for truthfulness; inconsistencies either in allegations of
7 limitations or between statements and conduct; daily activities; work record; and
8 testimony from physicians and third parties concerning the nature, severity, and
9 effect of the claimant's alleged symptoms. *Light v. Social Sec. Admin.*, 119 F.3d
10 789, 792 (9th Cir. 1997).

11 **B. The Lack of Objective Medical Evidence for Symptoms**

12 Ms. Glore alleges that the ALJ "cherry-picked" from among the available
13 medical records to form the opinion that "[o]bjective medical evidence does not
14 support the degree of limitation the claimant has alleged from her mental health
15 symptoms." ECF No. 12 at 9; ECF No. 9-2 at 26, Tr. 25. Ms. Glore notes that,
16 while the ALJ recounted some findings from treatment notes and a mental status
17 exam, the ALJ improperly ignored other objective findings which corroborate
18 Ms. Glore's reported symptoms. ECF No. 12 at 11. Ms. Glore cites a series of
19 treatment notes which documented her medical conditions. *See id.* at 10 (listing
20 treatment notes finding anxiety, depression, agitation, concentration issues,
21 obsessive behavior, and fatigue).

1 The Court finds that Ms. Glore misconstrues the ALJ's conclusion. The ALJ
2 did not find that the objective medical evidence did not support Ms. Glore's
3 alleged limitations. The ALJ merely found that the objective medical evidence did
4 not support *the degree of limitation* alleged by Ms. Glore. *See* ECF No. 9-2 at 26,
5 Tr. 25. The treatment notes cited by Ms. Glore include findings of depression,
6 anxiety, and other psychological limitations. *See* ECF No. 12 at 10. The ALJ found
7 that Ms. Glore in fact suffered from depression and anxiety. ECF No. 9-2 at 22,
8 Tr. 21. The ALJ only utilized the treatment notes as one factor in the overall
9 credibility analysis. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001)
10 ("While subjective pain testimony cannot be rejected on the sole ground that it is
11 not fully corroborated by objective medical evidence, the medical evidence is still
12 a relevant factor in determining the severity of the claimant's pain and its disabling
13 effects."). There is no indication that the ALJ "cherry-picked" Ms. Glore's medical
14 records: the ALJ noted that the evidence did not support the degree of limitation,
15 not that a limitation did not exist. As the factors noted by the ALJ are supported by
16 substantial evidence in the record, the Court does not find that the ALJ committed
17 reversible error when considering the lack of total medical corroboration as one
18 factor in the credibility analysis. *See Morgan*, 169 F.3d at 600.

19 **C. Improvement with Treatment**

20 Ms. Glore contends that the ALJ improperly found that she lacked
21 credibility due to improvement of her psychological conditions. ECF No. 12 at 12.

1 The ALJ considered medical records that showed Ms. Glore's depression, mood,
2 energy, and sleep patterns improved with the use of medication. ECF No. 9-2 at
3 26, Tr. 25.

4 "That a person who suffers from severe panic attacks, anxiety, and
5 depression makes some improvement does not mean that the person's impairments
6 no longer seriously affect her ability to function in a workplace." *Holohan v.*
7 *Massanri*, 246 F.3d 1195, 1205 (9th Cir. 2001). "Cycles of improvement and
8 debilitating symptoms are a common occurrence, and in such circumstances it is
9 error for an ALJ to pick out a few isolated instances of improvement over a period
10 of months or years and to treat them as a basis for concluding a claimant is capable
11 of working." *Garrison v. Colvin*, 759 F.3d 995, 1017 (9th Cir. 2014). Improvement
12 must "be interpreted with an awareness that improved functioning while being
13 treated and while limiting environmental stressors does not always mean that a
14 claimant can function effectively in the workplace." *Id.* In *Garrison*, the ALJ
15 "improperly singled out a few periods of temporary well-being from a sustained
16 period of impairment and relied on those instances to discredit [the claimant]." *Id.*
17 at 1018.

18 Ms. Glore argues that it was improper for the ALJ to consider any
19 improvement of her symptoms considering the overall history of her impairments.
20 ECF No. 12 at 13. Even if the ALJ's consideration of instances of improvement
21 were in error, however, the Court finds that any such error was harmless. "So long

1 as there remains ‘substantial evidence supporting the ALJ’s conclusions
2 on . . . credibility’ and the error ‘does not negate the validity of the ALJ’s ultimate
3 [credibility] conclusion,’ such is deemed harmless and does not warrant reversal.”
4 *Carmickle v. Comm’r, Social Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008)
5 (internal citations omitted). “[T]he relevant inquiry . . . is not whether the ALJ
6 would have made a different decision absent the error . . . [but] is whether the
7 ALJ’s decision remains legally valid, despite such error.” *Id.*

8 The ALJ discussed symptom improvement as one of several factors in her
9 analysis that demonstrated that Ms. Glore’s statements concerning the intensity and
10 limiting effects of her physiological limitations were not entirely credible. *See* ECF
11 No. 9-2 at 26, Tr. 25. As the overall credibility finding remains supported by other
12 legitimate “clear and convincing reasons,” the Court finds that the ALJ did not
13 commit reversible error when considering Ms. Glore’s improvement of symptoms.

14 **D. Activities of Daily Life**

15 Ms. Glore argues that the ALJ improperly considered her activities of daily
16 life when determining her credibility. ECF No. 12 at 14. The ALJ found that
17 activities such as caring for her grandson, shopping, spending time on the
18 computer, and visiting a friend were inconsistent with the limitations alleged by
19 Ms. Glore. ECF No. 9-2 at 26, Tr. 25. Ms. Glore alleges that the ALJ was not
20 sufficiently specific in linking which of her activities discredited which of her

1 alleged limitations. Ms. Glore also provided alternate explanations for each
2 finding. ECF No. 12 at 14–17.

3 The ALJ’s findings are to be upheld by a reviewing court if those findings
4 are supported by inferences reasonably drawn from the record. *Batson*, 359 F.3d at
5 1193. Before discussing Ms. Glore’s activities of daily life, the ALJ noted
6 Ms. Glore’s description of her limitations which included not having motivation or
7 energy, not wanting to go outside, and having neither any friends nor any hobbies.
8 *See* ECF No. 9-2 at 25, Tr. 24. The Court makes the reasonable inference that the
9 ALJ, when noting that certain activities are “inconsistent with the limitations the
10 claimant has alleged,” was discussing the testimony offered by Ms. Glore as to her
11 limitations. *See* ECF No. 9-2 at 25–26, Tr. 24–25. As such, the Court finds that the
12 ALJ’s discussion of Ms. Glore’s activities of daily life is sufficiently specific as to
13 Ms. Glore’s alleged limitations.

14 Although Ms. Glore has proffered alternative reasonable explanations, it is
15 not this Court’s role to second-guess the reasonable conclusions reached by the
16 ALJ. *See Rollins*, 261 F.3d at 857 (noting that “the ALJ’s interpretation of [the
17 claimant’s] testimony may not be the only reasonable one. But it is still a
18 reasonable interpretation and is supported by substantial evidence; thus, it is not
19 our role to second-guess it.”). As the Court finds that there is substantial evidence
20 supporting the ALJ’s conclusions concerning Ms. Glore’s activities of daily life, it

1 is not within this Court's discretion to overturn the ALJ's finding simply because
2 other alternative, reasonable explanations may exist.

3 **E. Conclusion**

4 As the Court finds the ALJ's credibility analysis was supported by clear and
5 convincing reasons based on substantial evidence in the record, the Court finds that
6 the ALJ did not commit reversible error when determining that Ms. Glore was not
7 entirely credible as to the extent of her symptom's limiting effects.

8 **III. Assessment of Ms. Glore's Memory Impairment**

9 Ms. Glore argues that the ALJ improperly assessed her alleged memory
10 impairment. ECF No. 12 at 17. The Commissioner agrees that the ALJ erred but
11 insists that, given the ALJ's other findings, the error was harmless. ECF No. 14 at
12 22.

13 The ALJ rejected Ms. Glore's alleged issues with forgetfulness and
14 confusion as "there is no diagnosis that would support these symptoms." ECF
15 No. 9-2 at 23, Tr. 22. The ALJ determined that "[a]s there is no diagnosis of a
16 condition that could cause these symptoms from an acceptable medical source, I
17 find the claimant's alleged memory problems to not be medically determinable."

18 *Id.* The Commissioner concedes that the ALJ erred as the ALJ did not consider
19 whether Ms. Glore's depression could reasonably be expected to cause her alleged
20 memory problems. ECF No. 14 at 22. Accordingly, the Court finds that the ALJ's

1 finding that Ms. Glore's alleged memory limitation was not medically
2 determinable is not supported by substantial evidence in the record.

3 The Commissioner argues that both Drs. Genthe and Brown considered
4 Ms. Glore's alleged memory limitation. *Id.* Dr. Genthe found that Ms. Glore's
5 "ability to understand and remember short, simple instructions" and "ability to
6 understand and remember detailed instructions" were "good." ECF No. 9-7 at 19,

7 Tr. 256. Dr. Brown answered the question "Does the individual have
8 understanding and memory limitations?" with "No." ECF No. 9-3 at 22, Tr. 95.

9 The Commissioner contends that, by discussing Drs. Genthe and Brown's opinion,
10 the ALJ considered any limitations posed by Ms. Glore's alleged memory
11 impairment. ECF No. 14 at 22. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir.
12 2007) (failure to list impairment harmless as ALJ "extensively discussed"
13 impairment and sufficiently considered any limitations).

14 The Court agrees with the Commissioner's interpretation. In *Lewis*, the ALJ
15 failed to consider the claimant's bursitis during step two of the Sequential Process.
16 *Id.* The ALJ, however, "extensively discussed" the claimant's bursitis during step
17 four. *Id.* The court held that, based on the ALJ's discussion, the ultimate decision
18 sufficiently "considered any limitations posed by the bursitis at Step 4." *Id.*

19 Here, the ALJ discussed Ms. Glore's alleged memory limitation during step
20 four. The ALJ recounted that "the claimant was able to recall 3/3 objects after a 5
21 minute delay." ECF No. 9-2 at 26, Tr. 25. The ALJ also noted Dr. Genthe's

1 opinion that “the claimant’s ability to understand, remember, and carry out short,
2 simple instructions, as well as detailed instructions was good.” ECF No. 9-2 at 27,
3 Tr. 26. The ALJ gave this section of Dr. Genthe’s opinion “[s]ignificant weight.”
4 *Id.* The ALJ also considered the lay testimony of Ms. Glore’s daughter, Felicia
5 Dickerson, who reported that Ms. Glore was “very forgetful.” ECF No. 9-2 at 28,
6 Tr. 27. The ALJ stated that she specifically “considered these statements and find
7 that they support that the claimant has some limitations” but that the statements
8 “generally reflect the same allegations made by the claimant, which are not entirely
9 credible.” *Id.* The ALJ included a memory-based limitation in the RFC, finding
10 that “the claimant can understand, remember and carry out unskilled, routine and
11 repetitive work.” ECF No. 9-2 at 25, Tr. 24.

12 The Court finds that the ALJ sufficiently considered Ms. Glore’s alleged
13 memory limitation when formulating the RFC. The ALJ gave “[s]ignificant
14 weight” to Dr. Genthe’s opinion that Ms. Glore had no noticeable memory
15 limitation. *See* ECF No. 9-2 at 26, Tr. 25; ECF No. 9-7 at 19, Tr. 256. The ALJ
16 also sufficiently discussed the credibility of Ms. Glore’s statements concerning her
17 memory limitation. *See* ECF No. 9-2 at 26, Tr. 25 (noting that Ms. Glore was able
18 to recall information after a delay); ECF No. 9-2 at 28, Tr. 27 (ALJ considered lay
19 testimony concerning forgetfulness and found the statements were based on
20 Ms. Glore’s not entirely credible self-report). The RFC also conformed to
21 Dr. Genthe’s opinion concerning an alleged memory limitation, as the RFC

1 repeated Dr. Genthe's finding that "the claimant can understand, remember and
2 carry out unskilled, routine and repetitive work." ECF No. 9-2 at 25, Tr. 24. As in
3 *Lewis*, the ALJ sufficiently considered any limitation posed by Ms. Glore's alleged
4 memory problems when formulating the RFC.

5 Ms. Glore argues that a Social Security Ruling prohibited the ALJ from
6 considering her alleged memory limitation. ECF No. 12 at 18 (quoting SSR 96-8p,
7 1996 WL 374184 (July 2, 1996)). However, as the ALJ's decision in fact
8 considered Ms. Glore's alleged memory limitations, any error on the part of the
9 ALJ was harmless. Ms. Glore also cites *Brown-Hunter v. Colvin*, __F.3d__,
10 No. 13-15213, 2015 WL 6684997 (9th Cir. Aug. 4, 2015), for the proposition that
11 the ALJ's error in failing to consider Ms. Glore's memory symptoms "can never be
12 harmless." ECF No. 16 at 10. However, *Brown-Hunter* merely noted the rule that
13 "[a] reviewing court may not make independent findings based on the evidence
14 before the ALJ to conclude that the ALJ's error was harmless." *Brown-Hunter*,
15 2015 WL 6684997, at *4. The Court is not making an independent finding, and is
16 instead merely reviewing the ALJ's decision and drawing reasonable inferences as
17 to the ALJ's conclusions. *See Batson*, 359 F.3d at 1193.

18 As such, the Court finds that, while the ALJ erred in determining that
19 Ms. Glore's alleged memory limitation was not medically determinable, such error
20 was harmless.

21 ¶

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND REMANDING FOR FURTHER PROCEEDINGS ~ 30

1 **IV. Remand for Further Proceedings**

2 Ms. Glore urges that, should this Court find any reversible error in the ALJ's
 3 decision, the Court should remand for the immediate award of benefits. ECF
 4 No. 12 at 18. However, as the Court finds that the credit-as-true rule is not
 5 appropriate, the Court instead remands this case to the Commissioner for further
 6 proceedings consistent with this Order.

7 The ordinary remand rule applies to Social Security cases. *Treichler v.*
 8 *Comm'r of Social Sec. Admin.*, 775 F.3d 1090, 1099 (9th Cir. 2014). As the Ninth
 9 Circuit has noted:

10 [i]f the reviewing court determines 'that the agency erred in some
 11 respect in reaching a decision to deny benefits,' and the error was not
 12 harmless, sentence four of § 405(g) authorizes the court to 'revers[e]
 13 the decision of the Commissioner of Social Security, with or without
 14 remanding the cause for a rehearing . . . [W]hen the record before the
 15 agency does not support the agency action, . . . the agency has not
 16 considered all relevant factors, or . . . the reviewing court simply cannot
 17 evaluate the challenged agency action on the basis of the record before
 18 it, the proper course, except in rare cases, is to remand to the agency for
 19 additional investigation or explanation.

20 *Id.* (internal citations omitted).

21 Additionally, district courts have statutory authority "to reverse or modify an
 22 administrative decision without remanding the case for further proceedings."
 23 *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). The exercise of such
 24 authority "was intended to be discretionary." *Id.* The Ninth Circuit applies a three-
 25 step framework to "deduce whether this is one of the rare circumstances where we
 26

1 may decide not to remand for further proceedings.” *Treichler*, 775 F.3d at 1103.
2 This is referred to as the credit-as-true rule. *Garrison*, 759 F.3d at 1019. Where a
3 court has found that a claimant has failed to satisfy one of the factors of the credit-
4 as-true rule, the court does not need to address the remaining factors. *Treichler*,
5 775 F.3d at 1107. Under the first step, the Court must determine whether “the ALJ
6 has failed to provide legally sufficient reasons for rejecting . . . claimant
7 testimony.” *Id.* at 1103 (internal citation omitted). The Court concludes, for the
8 reasons stated above, that the ALJ did not provide legally sufficient reasons for
9 rejecting Dr. Genthe’s opinion that Ms. Glore social limitations would make it
10 unlikely that Ms. Glore could function adequately in a work setting.

11 Under the second step, the Court must “turn to the question [of] whether
12 further administrative proceedings would be useful.” *Id.* At this stage, the Court
13 considers “whether the record as a whole is free from conflicts, ambiguities, or
14 gaps, whether all factual issues have been resolved, and whether claimant’s
15 entitlement to benefits is clear under the applicable legal rules.” *Id.* at 1103–04.
16 Here, Drs. Genthe and Brown reached different conclusions concerning the
17 severity of any limitations imposed by Ms. Glore’s psychological issues. *Compare*
18 ECF No. 9-7 at 19, Tr. 256 (“At this time, she is unlikely to function adequately in
19 a work setting until her psychological symptoms have been managed more
20 effectively.”) *with* ECF No. 9-3 at 23, Tr. 96 (“[Claimant’s] psychiatric limitations
21 limit [claimant’s] ability to work in close proximity to the general public and co-

1 workers. However, if contact was kept brief and superficial, [claimant] can
2 persist.”). Even if fully credited, Dr. Genthe’s opinion conflicts with other medical
3 evidence relied upon by the ALJ. As such, the Court finds that further proceedings
4 would be appropriate and useful in resolving this matter, in particular concerning
5 the severity of Ms. Glore’s social limitations and any resulting effect on Ms.
6 Glore’s RFC.

7 Accordingly, **IT IS HEREBY ORDERED:**

- 8 1. Plaintiff’s motion for summary judgment, **ECF No. 12**, is **GRANTED**.
- 9 2. Defendant’s motion for summary judgment, **ECF No. 14**, is **DENIED**.
- 10 3. This case is **REMANDED** for a *de novo* hearing before the Social Security
11 Administration.
- 12 4. **UPON REMAND**, the ALJ will conduct a *de novo* hearing and issue a new
13 decision that is consistent with the applicable law set forth in this Order. The
14 ALJ will, if necessary, further develop the record, reassess the claimant’s
15 residual functional capacity, obtain supplemental evidence from a vocational
16 expert, and re-evaluate the claimant’s credibility.

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ORDER GRANTING PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
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1 5. **JUDGMENT** shall be entered for the Plaintiff.

2 The District Court Clerk is hereby directed to enter this Order, enter
3 judgment accordingly, provide copies to counsel, and to **close this file**.

4 **DATED** this 10th day of December 2015.

5
6 *s/ Rosanna Malouf Peterson*
7 ROSANNA MALOUF PETERSON
Chief United States District Judge